

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
ALABAMA  
SOUTHERN DIVISION

PICKWICK PLACE, INC.,

Plaintiff,

v.

SJP INVESTMENT PARTNERS, LLC.

Defendant.

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Civil Action Numbe  
2:17-cv-00822-AKK

**MOTION TO ENFORCE SETTLEMENT AGREEMENT**

**COMES NOW**, Plaintiff, Pickwick Place, Inc. (“Pickwick”), and moves this Court to enforce the Settlement Agreement reached between the parties. In support thereof, Pickwick moves as follows:

1. This case stems from a dispute between the two members of the Pickwick Place Condominium Association (“Association”). A resolution of the dispute was reached between the parties and, on June 27, 2017, the parties filed a Joint Notice of Settlement Agreement. A copy of the Joint Notice of Settlement Agreement is attached as **Exhibit A**.

2. On August 21, 2017, this Court entered an Order, dismissing the case but retaining “jurisdiction over the matter to the extent necessary to oversee the settlement.” A copy of the Court’s Order is attached as **Exhibit B**.

3. The Settlement Agreement required the parties, in part, to “terminate and dissolve” the Declaration of Condominium of Pickwick Place, a Condominium Development. See Section 2 of **Exhibit B**.

4. Pickwick has exchanged draft documents to Defendant, SJP Investment Partners, LLC (“SJP”). However, SJP has failed to execute the same nor take steps to dissolve the declaration of condominium and the Association—despite the terms of the Settlement Agreement.

5. On November 21, 2017, SJP issued correspondence setting a meeting of the Association’s Board of Directors to address, in part, “ the current status of the management and operation of the Association...[and] the removal and appointment of Board Members.” A copy of the correspondence is attached as **Exhibit C**. By its terms, SJP’s letter makes it clear that SJP has no intent to be bound by the Settlement Agreement’s requirement to dissolve and terminate the Association and Declaration.

**WHEREFORE, PREMISES CONSIDERED**, Pickwick hereby asks this Court to enforce the Settlement Agreement and enter an Order requiring SJP to dissolve and terminate the Association.

Respectfully submitted,

/s/ Jack P. Russell  
Attorney for Pickwick Place, Inc.  
Alabama Bar No. 1423-ASB-A59R

OF COUNSEL:  
Hand Arendall LLC  
1801 5<sup>th</sup> Avenue North, Suite 400  
Birmingham, AL 35203  
Telephone (205) 324-4400  
Facsimile (205) 322-1163  
Email: [jrussell@handarendall.com](mailto:jrussell@handarendall.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of November, 2017, a true and correct copy of the foregoing has been furnished either through the Court's electronic filing system or by U.S. Mail, postage prepaid, upon the following party:

Richard Bearden  
Spenser Templeton  
MASSEY STOTSER & NICHOLS, P.C.  
1780 Gadsden Highway  
Birmingham, AL 35235

Joseph A. Fawal  
Fawal & Spina  
1330 21<sup>st</sup> Way S., Ste. 200  
Birmingham, Alabama 35205

Jack P. Russell  
OF COUNSEL

### SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 27<sup>th</sup> day of June, 2017, by and between SJP Investment Partners, LLC ("SJP") and Pickwick Place, Inc. ("Pickwick").

### RECITALS

A. On April 27, 2017, Pickwick filed a Temporary Restraining Order and Complaint against SJP in the Circuit Court of Jefferson County, Alabama, designated as case number 2017-901731. On May 19, 2017, SJP removed the matter to the Northern District Court of Alabama where it was designated as case number 2:17-CV-822-AKK. SJP filed an Answer to Complaint and Motion or Preliminary Injunction. The parties' claims remain pending.

B. The parties desire to enter into this Agreement in order to resolve the claims against each party. The parties further desire to file a Joint Notice of Settlement Agreement. It shall incorporate this Agreement and request that the Court retain jurisdiction over the Agreement until such time as the Agreement is completed.

### AGREEMENT

For and in consideration of good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **CAM/CAP Charges:** Pickwick agrees to accept the sum of \$10,000.00 from SJP for accrued CAM/CAP charges incurred from January 2017 to the present. Payment shall be made to Pickwick within forty-eight (48) hours of the approval and ratification of the Joint Notice of Settlement Agreement by the Court. Upon approval and ratification of Joint Notice of Settlement Agreement and payment of \$10,000.00 to Pickwick by SJP, then Pickwick shall execute the documents necessary for the installation of the Spectrum wiring as provided in Section 5 hereof and approve the installation of the HVAC units on the roof of the breakfast nook as provided in Section 3 hereof. Under no circumstances shall any work be authorized under either the Spectrum or HVAC documents until such time as the Court approves and ratifies the Joint Notice of Settlement Agreement and payment is made to Pickwick by SJP.

2. **Dissolution of Condominium Association:** SJP and Pickwick agree to terminate and dissolve that certain Declaration of Condominium of Pickwick Place, a Condominium Development, recorded in Book 2749, Page 413 of the Probate Court of Jefferson County, Alabama ("Declaration"). The parties agree to record documents necessary to dissolve the Declaration by July 11, 2017. With respect to the currently existing common elements, the party upon which the common element is located shall provide an easement to the other party for the existing common element with the easement-receiving party to provide a quitclaim deed for said common element.

EXHIBIT

A

tabbles

In addition, both parties agree to execute and record documents necessary to dissolve Pickwick Place, Inc., an Alabama not-for-profit corporation. The recording costs associated with terminating the Declaration, dissolving the not-for-profit entity, and recording the various easement(s) and quitclaim deed(s) shall be split equally between the parties.

3. **Pickwick/SJP Roof:** Pickwick shall execute a quitclaim deed as to any rights it may have to the roof above SJP's hotel breakfast nook, subject to the following: (i) execution by SJP of an easement in favor of Pickwick for access through the hotel to the roof area for the maintenance and replacement Pickwick's HVAC units and roof and (ii) construction of stub walls delineating the roof above SJP's hotel breakfast nook and the roof above Pickwick's commercial units. The location of the stub walls shall be based upon the Declaration's definition and/or description of SJP's hotel roof. SJP shall, in turn, execute a quitclaim deed as to any right it may have to the roof above Pickwick's commercial properties. The parties further agree to enter into an agreement wherein each party agrees to be responsible for any property damage that its respective HVAC units and/or roof leaks may cause to the abutting party's property. All documents shall be in form and substance satisfactory to each of the parties.

4. **Basement Parking Lease:** The parties shall enter into a Basement Lease, which shall (i) run for a period of thirty years, (ii) carry a monthly fee of \$1,000.00, (iii) have an effective date of July 1, 2017, (iv) contain a provision that all payments under the Basement Lease shall become due on the first day of each month, and (v) include a purchase option that shall run for a period of five years. The option price shall total the then-balance of the Basement Lease with no present value discount.

The Basement Lease shall also carry a 5% escalator, which shall apply every five years for the length of the Basement Lease's term; however, the Basement Lease shall also contain a provision, stating that upon the sale of the hotel property; transfer of more than 10% of SJP's membership interests; or the transfer of SJP to any other entity, successor or assign, then an annual (i.e., yearly) 2.5% escalator provision shall become applicable to the Basement Lease for the remainder of the Basement Lease's term. The Basement Lease shall be in form and substance satisfactory to each of the parties.

Upon execution of this Agreement, SJP agrees to relocate its staging area by July 1, 2017 so that it does not interfere with access to any circuit breakers, meters, and/or utility room(s).

5. **Spectrum Wiring:** Pickwick shall approve the installation plans and specifications proposed by Spectrum wiring upon execution hereof.

6. **Service Contract:** SJP agrees to enter into a twelve-month service contract for the period of 2017 with KH Management, LLC effective July 1, 2017 through June 30, 2018 for a base amount of \$994.36 with all payments being due on the first of the month. The service contract shall include, but not be limited to the following:

- Blowing the parking area 3 times a week

- Cleaning the plaza/walkway area
- Access to garbage compactor
- Security cameras in the plaza/walkway area
- Plaza landscaping, excluding the patio rental described below
- Pest control in the plaza and basement areas

The service contract shall include a 2.5% escalator provision for future renewals. The parties agree to execute the contract no later than July 1, 2017.

7. **Patio Rental:** The parties shall enter into an agreement, which shall be styled Patio Rental Lease relative to SJP's use of a 20' x 20' (approximately 400 sq. ft.) patio area extending to the rear of SJP's building onto the plaza. The patio area shall be in form similar to the design set forth in the diagram attached hereto. The Patio Rental Lease shall run for a five-year period and carry a \$500.00 monthly rental fee, which shall become due and payable upon the first day of each month following the month in which Pickwick shall approve all plans and specs for the Patio Rental Lease. Pickwick shall have the right to approve the size, location, fencing, furniture and other items used in the patio with Pickwick's consent not being unreasonably withheld or delayed, which such approval shall be granted within ten (10) days; provided, however, any material change made to the patio by SJP after Pickwick's initial approval shall require Pickwick's renewed approval, but in no event shall Pickwick's renewed approval be unreasonably withheld or delayed.

Notwithstanding anything contained to the contrary herein, SJP shall agree to submit a final drawing, material selection, and furniture representation for Pickwick's approval prior to, and under no circumstances before, placing any of the foregoing items on the patio area. SJP and its successor or assigns shall be responsible for any repairs, maintenance and upkeep of the patio area during the term of the Patio Rental Agreement, including any costs associated with removing the patio fencing. SJP shall also be responsible for repairing any damage to the plaza area if during the installation or removal of the fencing there is any damage to the plaza. If the Patio Rental Agreement is not renewed, removal of the fencing and repair of the plaza area will be the responsibility of the hotel ownership at the time of removal. In the event Pickwick elects to make changes to the plaza flooring, then Pickwick shall have the right to change the flooring in the patio rental area as well. Under no circumstances shall SJP and its successors or assigns have the right to fasten, drill, bolt, or otherwise attach the fencing to the plaza floor. Further, the fencing shall not exceed four feet in height.

SJP shall have an option to renew the Patio Agreement for an additional period of five (5) years at its option with an escalator of five (5%) percent only in the event that SJP shall continue to own the hotel property and has not transferred more than ten (10%) percent of its membership interest, or its ownership interest to any other entity, successor or assign. The Patio Rental Lease shall contain a cancellation provision whereby SJP may cancel the Patio Rental Lease upon 30 days' written notice to Pickwick.

8. Miscellaneous:

(a) Each party represents that it has the authority and capacity to enter into this Agreement, and each party agrees to bear its own costs and attorneys' fees related to this action.

(b) This Agreement shall be construed and interpreted in accordance with the laws of the State of Alabama and such shall be the exclusive jurisdiction of any action to enforce the terms of this Agreement.

(c) Subject to the provisions of Section 1, the parties agree to file contemporaneously herewith a Motion to Approve Settlement in the action before the Northern District of Alabama, designated as 2:17-CV-822-AKK which shall incorporate the terms of this Agreement and further shall request that the Court retain jurisdiction of this matter until such time as the pleading and documents have been recorded or filed. The parties agree to cooperate fully and execute any commercially reasonable and necessary supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

(d) It is agreed that upon execution of the original of this document by the signatories indicated below, photocopies of the said executed documents shall have the same full force and legally binding effect as the original thereof and may be used for all purposes for which the original could be tendered.

(e) This it is further agreed that this Agreement contains the entire agreement among the parties and supersedes all prior negotiations, discussions, representations, commitments or understandings. There have been no other representations, promises or agreements not herein expressed, and this Agreement contains the entire agreement among the parties.

*Remainder of page left intentionally blank; signature page to follow*

IN WITNESS WHEREOF, I have hereunder set my hand and seal on this the \_\_\_\_ day of June, 2017.

PICKWICK PLACE INC.

  
By: Shirley S. Kahn  
Its: President

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )

I, the undersigned authority, a Notary Public, in and for said State and County, hereby certify that Shirley S. Kahn, whose name as President of Pickwick Place, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she, as such President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal on this the 27 day of June, 2017.

{SEAL}

  
NOTARY PUBLIC

My Commission Expires: March 15, 2020





**SJP INVESTMENT PARTNERS, LLC**

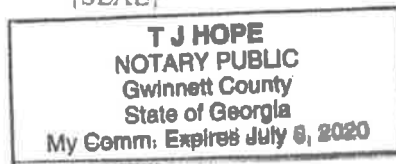
  
By: Jay Patel  
Its: Managing Member


STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County in said State, hereby certify that Jay Patel, whose name as the Managing Member of SJP Investment Partners, LLC, a Georgia limited liability company, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said agreement, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 22 day of June, 2017.

{SEAL}



  
NOTARY PUBLIC  
My Commission Expires: 7-6-2020

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**PICKWICK PLACE, INC.,**

**Plaintiff,**

**v.**

**SJP INVESTMENT PARTNERS,  
LLC,**

**Defendant.**

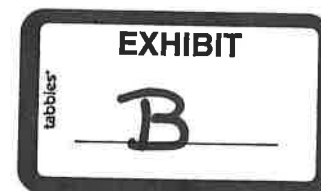
Civil Action Number:  
**2:17-cv-00822-AKK**

**ORDER**

Consistent with the Joint Notice of Settlement Agreement, doc. 9, the complaint is **DISMISSED WITH PREJUDICE**. However, at the parties' request, the court retains jurisdiction over the matter to the extent necessary to oversee the settlement. In light of the settlement, the Motion for Preliminary Injunction is **MOOT**.

**DONE** the 21st day of August, 2017.

  
**ABDUL K. KALLON**  
UNITED STATES DISTRICT JUDGE



# THE PARKER LAW FIRM, LLC

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Writer's email:  
lparker@lparkerlaw.com

November 21, 2017

✓ Ms. Shirley Khan  
c/o Jack P. Russell, Esquire  
Hand Arendall LLC  
1810 5th Avenue North, Suite 400  
Birmingham, AL 35203

Shirley S. Kahn, Registered Agent  
Pickwick Place, Inc., an Alabama for-profit corporation  
600 Olde English Lane, Suite 128  
Birmingham, AL 35223

RE: Pickwick Place, Inc., the condominium association for Pickwick Place, a Condominium  
Development/ Special Called meeting of the members of the Association  
PLF File 4031.001

Dear Ms. Kahn:

I represent SJP Investment Partners, LLC, the owner of Unit B of the Pickwick Place Condominium, as established by that certain Declaration of Condominium of Pickwick Place, a Condominium Development as the same is recorded in the Office of the Judge of Probate of Jefferson County, Alabama at Real Book 2794, Page 413. On behalf of SJP Investment Partners, LLC and pursuant to Section 2.4 of the Bylaws of Pickwick Place, Inc. (the "Association"), I am hereby providing notice of a special called meeting of the members of the Association which shall be held on Friday, December 1, 2017 at 10:00 a.m. CST at the offices of The Parker Law Firm, LLC whose address is 500 Office Park Drive, Suite 100, Birmingham, Alabama 35223. The purpose for this meeting is to discuss the following items: (1) the current status of the management and operation of the Association; (2) the current members of the Board of Directors of the Association; (3) the removal and appointment of Board Members; (4) the status of The Declaration of Easements and Restrictions dated September 17, 1985, and recorded in the Office of the Judge of Probate of Jefferson County, Alabama at Real Book 2794, Page 479; and (5) the Insurance coverage required to be held by the Association; and (6) any other item as the members of the Association shall agree to discuss.

Sincerely,

The Parker Law Firm, LLC



Lorrie Maples Parker

cc: Jay Patel, SJP Investment Partners, LLC  
Evan Miller, KH Management

